

### CONTRACTS INVOLVING EXPENDITURES IN EXCESS OF AMOUNTS APPROPRIATED FOR OBJECTS AUTHORIZED.

A contract may be entered into for the full completion of an object authorized by law within the limit of cost fixed for it, even though such limit is greater than the amount appropriated for the object, provided payment therefor is limited to the amount in the Treasury appropriated therefor, exclusive of other obligations or expenditures, and is made subject to future appropriations.

*(Comptroller Tracewell to the Secretary of Commerce and Labor, January 25, 1907.)*

In your communication of January 19, 1907, you request my decision of the following question:

"At the instance of the Light-House Board this Department respectfully requests your decision whether or not it can properly and legally enter into a contract for the construction of a light and fog-signal station at or near Southwest Ledge, Conn., or make other expenditures in connection with the construction of said light and fog-signal station, in excess of the sum of sixty thousand dollars appropriated by the act approved April 28, 1904, for Black Ledge light and fog-signal station, and, by act approved June 20, 1906, made available for this purpose."

### CONTRACTS IN EXCESS OF AMOUNTS APPROPRIATED. 479

The act of June 20, 1906 (34 Stat., 321, 322), contains the following provisions:

"That the Secretary of Commerce and Labor be, and he is hereby, authorized to establish and provide the following aids to navigation \* \* \* in accordance with the respective limits of cost hereinafter set forth, which shall in no case be exceeded:

\* \* \* \* \*

"A light and fog-signal station at or near Southwest Ledge, entrance to New London Harbor, Connecticut, at a cost not to exceed one hundred and fifteen thousand dollars: *Provided*, That the sum of sixty thousand dollars, appropriated by the act approved April twenty-eighth, nineteen hundred and four, for establishing a light and fog-signal station at or near Black Ledge, entrance to New London Harbor, Connecticut, may be used toward constructing said light and fog-signal station at or near Southwest Ledge."

Section 3679 of the Revised Statutes, as amended by the act of February 27, 1906 (34 Stat., 48, 49), contains the following provisions:

"No Executive Department or other Government establishment of the United States shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract or other obligation for the future payment of money in excess of such appropriations unless such contract or obligation is authorized by law \* \* \*."

Section 4666 of the Revised Statutes provides that all material for the construction and repair of light-houses, etc., shall be procured by public contracts. Where, therefore, authority to construct or establish a light-house is granted by Congress, I think authority to enter into contract therefor is necessarily implied, unless otherwise prohibited by law.

Section 9 of the act of June 30, 1906 (34 Stat., 764), provides as follows:

"No act of Congress hereafter passed shall be construed to make an appropriation out of the Treasury of the United States, or to authorize the execution of a contract involving the payment of money in excess of appropriations made by law, unless such act shall in specific terms declare an appropriation to be made or that a contract may be executed."

But as the act of June 20, 1906, *supra*, containing the provision authorizing the establishment of a light and fog-signal station at Southwest Ledge, was passed before the enactment of the above provision, such authorization is not subject to this provision.

Section 3733 of the Revised Statutes also provides as follows:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement, which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."

If the provision in the act of June 20, 1906, *supra*, authorizing the establishment of a light and fog-signal station, had expressly authorized entering into a contract therefor, I should be of opinion that such express authorization operated as an exception to the provision in section 3733. But as it does not expressly authorize entering into a contract I think such authority can not be implied in contravention of the express prohibition in that section (6 Comp. Dec., 365, 369). The terms of this provision are, however, that no contract shall be entered into for the objects specified "which shall bind the Government to pay" a larger sum of money than the amount in the Treasury appropriated for such object. I think this language does not preclude the entering into a contract for the full completion of an object authorized, within the limit of cost therein fixed, although such limit of cost is greater than the amount appropriated, provided the payment therefor is limited to the amount in the Treasury appropriated therefor, exclusive of other obligations or expenditures, and made subject to future appropriation.

I have the honor, therefore, to advise you that you are not authorized to enter into a contract for the construction and *payment* for a light and fog signal at said station for a sum, which, together with other expenditures, shall exceed \$60,000, or to make any expenditures therefor in excess of said sum; but that you are authorized to enter into a contract for the construction of a light and fog signal at said station at a cost, together with other expenditures, not to exceed \$115,000; provided that payments thereunder are limited to a sum

which, together with all other expenditures, shall not exceed \$60,000, until another appropriation providing for the payment of any sum in excess thereof shall have been made by Congress.

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